

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CARL R. LIDKE

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

NO. CV-04-3086-RHW

**ORDER DENYING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Before the Court is Defendant's Motion for Summary Judgment (Ct. Rec. 20) and Defendant's Motion to Continue Trial Date (Ct. Rec. 41). For the reasons stated below, the Court denies Defendant's Motion for Summary Judgment.

BACKGROUND

Plaintiff filed suit on July 28, 2004, alleging the United States was negligent in its design and maintenance of the Maneuver Area Training Equipment Site ("MATES") at the Yakima Training Center. Plaintiff seeks \$1,817,657.57 in damages resulting from injuries sustained after walking into a window at the MATES. Before filing suit in federal court, Plaintiff pursued and was administratively denied a federal tort claim pursuant to 28 U.S.C. § 2675. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1346.

STANDARD OF REVIEW

Summary judgment is appropriate if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is

entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). There is no genuine issue for trial unless there is sufficient evidence favoring the non-moving party for a jury to return a verdict in that party’s favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). If the non-moving party “fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which the party will bear the burden of proof at trial,” then the trial court should grant the motion. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). When considering a motion for summary judgment, a court may neither weigh the evidence nor assess credibility; instead, “the evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

DISCUSSION

The Court has considered the parties’ briefing and argument and finds there are issues of fact that make summary judgment improper. Taking Plaintiff’s evidence as true, there are numerous genuine issues of fact for a jury to decide. First, under the *Feres* doctrine, there is a genuine issue as to whether Plaintiff’s injury occurred incident to service. Second, there is an issue as to the scope and extent Defendant possesses or controls the MATES facility. Third, what duty Defendant owed Plaintiff is an issue which hinges on Plaintiff’s status on the premises at the time the injury occurred. Lastly, whether the entry way at the MATES is “unreasonably dangerous” and whether a visual impairment from sunlight is a known and obvious condition also remain as issues of fact. Each of these facts is contested by the parties, and, because each fact is material, summary judgment dismissal is inappropriate.

Having reviewed the record, heard from counsel, and been fully advised in this matter, **IT IS HEREBY ORDERED:**

1. Defendant’s Motion for Summary Judgment (Ct. Rec. 20) is **DENIED**.

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ORDER DENYING DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT * 2

1 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
2 Order and forward copies to counsel.

3 **DATED** this 10th day of April, 2006.

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5 *s/ Robert H. Whaley*

6 **ROBERT H. WHALEY**
7 Chief United States District Judge
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